

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

FILMED

AUG 9 1991

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR BENEFICIAL WATER USE PERMIT)	FINAL ORDER
NO. 75997-g76L BY FRANK C. CARR)	
MARILYNN CARR)	

* * * * *

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received. Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the June 19, 1991, Proposal for Decision, and incorporates them herein by reference.

WHEREFORE, based upon the record herein, the Department makes the following:

ORDER

Subject to the terms, conditions, restrictions, and limitations specified below, Application for Beneficial Water Use Permit No. 75997-76L is hereby granted to Frank C. and Marilyn Carr to appropriate by means of a flowing well a total of 700 gallons per minute up to 560 acre-feet of groundwater per year at a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, Township 21 North, Range 23 West, in Sanders County, for new and supplemental irrigation. The period of diversion and use shall be from March 15 through October 15, inclusive of each year.

The appropriation for new irrigation shall be 700 gallons per minute up to 275 acre-feet of water per year. The places of

CASE # 75997

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use for the new irrigation shall be are 40 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 40 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14; 15 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and 15 acres in the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, totaling 110 acres.

The appropriation for the supplemental irrigation shall be 350 gallons per minute up to 285 acre-feet of water per year. The places of use for the supplemental irrigation shall be 33 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, 38 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 54 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$, 30 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, and 19 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14, totaling 174 acres.

This Permit is subject to the following conditions:

A. This Permit is subject to all prior existing water rights in the source of supply. Further, this Permit is subject to any final determination of existing water rights as provided by Montana law.

B. The Permittee shall install an adequate flow metering device in order to allow the flow rate and volume of water diverted to be recorded. The Permit shall keep a written record of the flow rate and volume of all waters diverted, including the period of time, and shall submit said records by November 30 of each year to the Water Resources Regional Office, 3220 Highway 93 South, P.O. Box 860, Kalispell, Montana 59903-0860.

C. This Permit is subject to § 85-2-505, MCA, requiring that all wells be constructed so they will not allow water to be wasted, or contaminate other water supplies or sources, and all flowing wells shall be capped or equipped so the flow of the

water may be stopped when not being put to beneficial use.

D. This Permit is issued in association with Water Right Claims No. W124099-76L, W124105-76L, W124106-76L, W124100-76L, and W124104-76L. The combined appropriations may not exceed 2.5 acre-feet per acre per year on the acreage designated above as supplemental irrigation.

E. This Permit is specifically made subject to all prior Indian reserved water rights of the Confederated Salish and Kootenai Tribes in the source of supply. It is the Tribes' position that economic investments made in reliance upon this Permit do not create in the Permittee any equity or vested right against the Tribes. The Permittee is hereby notified that any financial outlay or work invested in a project pursuant to this permit is at the Permittees' risk.

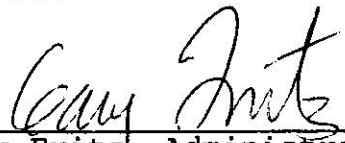
F. Issuance of this Permit by the Department shall not reduce Permittee's liability for damages caused by exercise of this Permit, nor does the Department, in issuing this Permit, acknowledge any liability for damages caused by exercise of this Permit, even if such damage is a necessary and unavoidable consequence of the same. The Department does not acknowledge liability for any losses that a Permittee may experience should they be unable to exercise the Permit due to the future exercise of reserved water rights.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a

petition in the appropriate court within 30 days after service of the Final Order.

Dated this 31 day of July, 1991.



Gary Fritz, Administrator
Department of Natural Resources
and Conservation
Water Resources Division
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6605

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record at their address or addresses this 1st day of ~~July~~ ^{AUGUST}, 1991 as follows:

Frank C. Carr
Marilynn Carr
Rt. 3, Box 456
Hot Springs, MT 59845

Dwight Preston
P.O. Box 636
Hot Springs, MT 59845

John D. Malinak
1125 Little Bitterroot Rd.
Hot Springs, MT 59845

John A. Welch
M. Isabelle Welch
Box 57
Hot Springs, MT 59845

Dusty Torgerson
48 Camp Aqua Rd.
Hot Springs, MT 59845

Douglas D. Page
Diane L. Page
2777 Hwy 28
Hot Springs, MT 59845

Clayton White
Gail White
Rt. 3, Box 399
Hot Springs, MT 59845

Lando R. Bras
P.O. Box 3
Lonepine, MT 59849

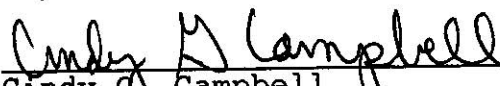
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Vivian A. Lighthizer
Hearing Examiner
Department of Natural
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1520 East 6th Avenue
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Chuck Brasen, Manager
Kalispell Water Resources
Regional Office
P.O. Box 860
Kalispell, MT 59903-0860


Cindy G. Campbell
Hearings Unit Legal Secretary

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) PROPOSAL FOR DECISION
NO. 75997-G76L BY FRANK C. AND)
MARILYNN CARR)

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was convened in the above-entitled matter on May 22, 1991, in Plains, Montana.

Applicants Frank C. and Marilynn Carr appeared at the hearing in person and by and through counsel, Robert H. Scott.

Objector Dwight Preston appeared at the hearing pro se.

Objectors John A. and M. Isabelle Welch appeared at the hearing by and through John A. Welch.

Objectors Douglas D. and Diane L. Page appeared at the hearing by and through Douglas D. Page.

Objectors Clayton and Gail White appeared at the hearing by and through Clayton White.

David Schmidt, Water Resources Specialist III with the Kalispell Water Resources Regional Office of the Department of Natural Resources and Conservation (Department), appeared at the hearing as an expert witness.

Objectors Confederated Salish and Kootenai Tribes and U.S. Department of Interior did not appear at the hearing. The Tribes stated in their objection that because their objection is a legal one, they would waive any actual hearing and requested the

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objection be made a part of the record. The Department of Interior stated in its objection that they would not attend any hearings on this Application; however, they do not waive the right to challenge the State's jurisdiction.

Objectors Dusty Torgerson, John D. Malinak, and Lando R. Bras did not appear at the hearing and had not made other arrangements with the Hearing Examiner, therefore their objections to this Application are dismissed.

EXHIBITS

Applicants' Exhibit 1 consists of five copies of portions of aerial photographs which have been taped together. This exhibit identifies the Applicants' property and the properties of Objectors Welch, Objector Preston, Objectors White, and Objector Malinak.

Applicants' Exhibit 2 is the well owner copy of the Well Log Report for the Applicants' well.

Objectors Page's Exhibit 1 is a copy of a Declaration of Vested Groundwater Rights filed in the Sanders County Courthouse on December 30, 1963, by Dean D. Sampson.

All Exhibits were received into the record without objection.

No party made objections to any part of the Department file, therefore, it is accepted into the record in its entirety.

FINDING OF FACT

1. Section 85-2-302, MCA, states in relevant part, "Except as otherwise provided in (1) through (3) or 85-2-306, a person

may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department."

2. Frank C. and Marilyn Carr filed the above-entitled Application with the Department on October 15, 1990, at 9:00 a.m.

3. Pertinent portions of the Application were published in the Mission Valley News on December 12, 1990, and in The Plainsman on December 13, 1990.

4. Applicants own the proposed places of use. (Testimony of Applicants.)

5. Applicants propose to appropriate a total of 700 gallons per minute (gpm) up to 560 acre-feet of groundwater per year at a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, Township 21 North, Range 23 West, in Sanders County¹, for new and supplemental irrigation. The proposed period of diversion and use is from March 15 through October 15, inclusive of each year. The proposed means of diversion is a flowing well.

For the new irrigation, Applicants propose to appropriate 700 gpm up to 275 acre-feet of water per year. The proposed places of use for the new irrigation are 40 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 40 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14; 15 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and 15 acres in the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, totaling 110 acres of new irrigation.

¹Unless otherwise specified in this Proposal, all legal land descriptions are in Township 21 North, Range 23 West, in Sanders County.

Applicants propose to appropriate 350 gpm up to 285 acre-feet of water per year for the supplemental irrigation. The proposed places of use for the supplemental irrigation are 33 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, 38 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 54 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$, 30 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, and 19 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14, totaling 174 acres of supplemental irrigation.

6. Applicants have filed Statement of Claim No. W124105-76L for a well used to irrigate the lands described above to receive supplemental water. The well operated under this Claim began to deteriorate in 1987. The casing at the top of the well rusted out. Applicants repaired the well at that time. However, the next spring the casing at the bottom of the well gave way, throwing clay which nearly plugged the well. During the winter of 1989 and 1990, a new well was drilled to replace the well as an irrigation source. The old well flowed at a rate of 350 gpm, the amount claimed as the historic use of the well. The new well flows at a rate of 700 gpm. Applicants filed for and received an Authorization to Change Appropriation Water Right for the new well and filed the instant Application for the additional water.

The water from the old well flowed into a reservoir with a capacity of 15 acre-feet. Applicants withdrew the water from the reservoir by two 10 horsepower pumps into a six-inch delivery pipe then to wheel line and hand line sprinklers. The new well would be operated with the same system except Applicants intend to replace the two pumps with one 30 horsepower pump. The new well is equipped with a valve so that the flow of the well can be

stopped when the water is not being put to beneficial use.

(Testimony of Applicants and Applicants' Exhibit 1.)

7. There is another well which flows into the reservoir and is also used on the acreage designated above to receive supplemental irrigation. Applicant has filed Statement of Claim No. W124099-76L for this well. Statements of Claim No. 124105-76L and 124106-76L have been filed by the Applicants for ground water use on places of use which overlap part or all of the proposed supplemental acreage. Applicant also has filed Statements of Claim No. W124100-76L and W124104-76L for water use from the Little Bitterroot River on places of use which overlap part or all of the same acreage as the area identified as supplemental irrigation. (Testimony of Applicant and Department records.)

8. The new well flows 700 gpm in the spring. However, the flow decreases to approximately 500 gpm as the irrigation season progresses. There is no evidence in the record of the amount of water diverted under the reduced flow rate. Applicant will use whatever flow is available and has no intention of pumping from the well. The well has been used at times since completion at the maximum flow rate. It is not clear from the record whether the well was used in this manner for an extended period of time or for short periods of time. (Applicants' Exhibit 2 and testimony of Applicant.)

The Applicants have expressed opposition to installing a metering device; however, in order to obtain a true and correct

record of the diminished flow rate and volume of water diverted, a measuring device must be installed.

9. The well is located in the Lonepine Aquifer which is a coarse sand and gravel deposit of probable glaciofluvial origin which underlies most of the Little Bitterroot valley. Virtually all wells and all known irrigation wells in the Little Bitterroot lowland south of Township 22 North are completed in the Lonepine Aquifer.

The Lonepine Aquifer is tightly confined beneath a sequence of Glacial Lake Missoula sediments ranging up to 300 feet in thickness. The aquifer confinement provided by the Lake Missoula sediments creates artesian conditions highlighted by flowing wells at low elevations south of the community of Lonepine. The Lonepine aquifer is well known for widespread well interference and systematic seasonal cycling of aquifer pressure. Drawdown effects of a high-yield well can be measured aquifer-wide. Additional well interference caused by the Applicants' proposal could lead to progressive head loss resulting in the seasonal loss of flowing wells. However, induced aquifer recharge at the north end of the valley may balance increased withdrawals at some intermediate but still lowered head. (Mark Shapley's report in Department file and testimony of David Schmidt.)

10. Objectors Page have a nonflowing well located approximately 12 miles northwest of Applicants' point of diversion. This well is 300 feet deep. In December of 1963, the static water level was 55 feet. In May of 1991, the static water

level was 62 feet. Although this decline is not appreciable, Applicant is concerned that it may increase in the future as other wells are drilled in the area. (Objector Pages' Exhibit 1 and testimony of Mr. Page.)

11. Objectors White have a six-inch flowing well approximately one mile north of Applicants' well. This well is approximately 250 feet deep and normally flows until June when water use from the aquifer increases, then it stops flowing. This year (1991) the well stopped flowing in May. When the well ceases flowing it is no longer used although Mr. White stated a pump could be installed in it. (Applicants' Exhibit 1 and testimony of Mr. White.)

12. Objector Preston has two flowing wells located approximately three miles northwest of Applicants' point of diversion. Mr. Preston has resided in the area for twenty years. During that time, Mr. Preston has noticed that his wells diminish during the irrigation season. However, his wells have never become so diminished that he was unable to use them. Mr. Preston expressed concern that Applicant might appropriate more than the 560 acre-feet per year since Applicant had no means to measure the appropriation and had stated, during the hearing, an aversion to installing such a device. Mr. Preston also objects to the instant Application on the basis that until the Water Right Claims have been adjudicated, the Department cannot know whether there are unappropriated waters. (Applicants' Exhibit 1 and testimony of Applicant and Mr. Preston.)

13. Objectors Welch have a flowing well located approximately four miles northwest of Applicants' point of diversion. Mr. Welch testified that his well "really affects" a neighbor's well. In fact, the neighbor's well cannot be used until Mr. Welch ceases to divert. Objectors Welch's well also affects Mr. Preston's well and another neighbor's well to a certain extent. (Applicants' Exhibit 1 and testimony of Mr. Welch.)

14. Applicants seek 2.5 acre-feet of water per acre per year for the new acreage. All Objectors voiced concern that Applicants were seeking too much water. Objectors stated that water users on the Project were restricted to one acre-feet per acre per year. Dave Schmidt testified that 2.5 acre-feet of water is the amount recommended by the Department for that climatic area. In order to divert the amount of water requested in the Application, Applicants would need to divert 700 gpm, 24 hours a day for 181 days. (Department file and testimony of Applicant, Objectors, and David Schmidt.)

15. The Kalispell Regional Office has not received a formal complaint regarding water use in the Lonepine area in the last three years. The record indicates that water users in the Lonepine area have developed a system of sharing the water. (Testimony of David Schmidt and Mr. Welch.)

16. All Objectors expressed a concern about the cumulative effect of future wells that may be drilled in the area.

17. There are no planned uses or developments for which water has been reserved from the proposed source. There are no planned uses or developments for which a permit has been issued which are located in the area that may be adversely affected by this Application. (Testimony of David Schmidt.)

18. The proposed point of diversion and places of use are within the boundaries of the Flathead Indian Reservation. The Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation and the Bureau of Indian Affairs chose not to attend the hearing in this matter, however, both entities continue their objections. The objections of these parties are based on the lack of jurisdiction. (Department file.)

Based upon the foregoing Findings of Fact and upon the record in this matter, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled, therefore, the matter was properly before the Hearing Examiner.

2. The Department has jurisdiction over the subject matter herein, and all the parties hereto.

3. The Department must issue a Beneficial Water Use Permit if the Applicant proves by substantial credible evidence that the following criteria set forth in § 85-2-311(1) and (4), MCA, are met:

(a) there are unappropriated waters in the source of supply at the proposed point of diversion;

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount the applicant seeks to appropriate; and

(iii) during the period in which the applicant seeks to appropriate, the amount requested is reasonably available;

(b) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; and

(f) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

...

(4) To meet the substantial credible evidence standard in this section, the applicant shall submit independent hydrologic or other evidence, including water supply data, field reports, and other information developed by the department, the U.S. geological survey, or the U.S. soil conservation service and other specific field studies, demonstrating that the criteria are met.

4. The proposed use, irrigation, is a beneficial use of water. See § 85-2-102(2), MCA.

5. The proposed means of diversion, construction, and operation of the appropriation works are adequate. See Findings of Fact 6 and 14.

6. The Applicants have possessory interest in the proposed places of use. See Finding of Fact 4.

7. The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been

issued or for which water has been reserved. See Finding of Fact 17.

8. There are unappropriated waters in the source of supply at the point of diversion, at times when the Applicant proposes to put those waters to beneficial use. See Finding of Fact 8.

Objectors White, Preston, and Welch did not express concern over the availability of water, but rather over artesian pressure. See Finding of Fact 11, 12, and 13. Objector Page did not express concern over Applicants' well, but of the cumulative effect of future wells as did the Objectors White, Preston and Welch. See Findings of Fact 10 and 16.

9. Water is available in the amount requested part of the period in which the Applicants seeks to appropriate. During the remaining proposed period of appropriation, the flow rate available is reduced. The reduction of flow rate would also reduce the total amount of water diverted. See Findings of Fact 8 and 14. Applicant would be able to use any amount of water available therefore water is reasonably available during the proposed period of diversion. See Finding of Fact 6.

10. There is substantial credible evidence that the water rights of others will not be adversely affected. See Finding of Fact 9.

Prior appropriators will be affected; however, although artesian flow is a reasonable means of diversion, it is not a protectable means of diversion. Section 85-2-401, MCA, states that priority of appropriation does not include the right to

prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of stream flow or the lowering of the water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions.

To hold that an appropriator is entitled to maintain artesian pressure against any subsequent appropriators would be to allow a single appropriator or limited number of appropriators to control an entire aquifer simply to make their means of diversion easier. Both case law and statutes prevent such a result.

At his own point of diversion on a natural water course, each diverter must establish some reasonable means of effectuating his diversion. He is not entitled to command the whole or a substantial flow of the stream merely to facilitate his taking the fraction of the whole flow to which he is entitled. Schodde v. Twin Falls Land & Co., 224 U.S. 107, 92 S. Ct. 470, 56 L.Ed 686. This principle applied to diversion of underflow or underground water means that priority of appropriation does not give a right to an inefficient means of diversion, such as a well which reaches such a shallow depth into the available water supply that a shortage would occur to such senior even though diversion by others did not deplete the stream below where there would be an adequate supply for the senior's lawful demand.

Colorado Springs v. Bender, 148 Colo. 458, 366 P. 2d 552 (1961) at 555. See also Alamosa-La Jara v. Gould, 674 P 2d 914 (1983); In re Application No. 31441-g41R by McAllister; In re Application No. 71133-g41B by Hildreth; In re Application No. 42666-g41F by MacMillan. The same principle applied to flowing wells means that priority of appropriation does not give a right to artesian

flow which may be reduced or eliminated for the senior even though diversion by others did not deplete the source where there would be an adequate supply for the senior's lawful demand.

The principle that no appropriator should be allowed to "command the source" simply so that he may have a convenient method of diversion, is consistent with the State of Montana's policy of maximizing the beneficial use of water. See § 85-2-101(3), MCA.

11. Beneficial use is the base, limit, and measure of the appropriative right, Toohy v. Campbell, 29 Mont. 13, 60 p. 396 (1900); Featherman v. Hennessey, 43 Mont. 310, 15 p. 983 (1911). Therefore the right cannot be greater than the amount needed to serve the use. Worden v. Alexander, 108 Mont. 208, 90 p. 20 160 (1939). The amount of water which can be beneficially used at the designated place of use is 2.5 acre-feet per acre per year. See Finding of Fact 14. Therefore the right issued hereunder shall be in association with Water Right Claims No. W 124099-76L, W124105-76L, W124106-76L, W124100-76L, and W124104-76L for a combined appropriation not to exceed 2.5 acre-feet per acre per year on the acreage designated herein as supplemental.

12. Some of the evidence produced at the hearing by the Objectors was based on fear of future aquifer depletion by the cumulative effect of other new wells. See Finding of Fact 15. Section 85-2-311, MCA, provides that the Department shall issue a permit if the Applicant proves by substantial credible evidence the criteria for issuance of a permit has been met. The

supposition that future wells might cause an adverse effect is not sufficient reason to deny an application. The Department must proceed on a case-by-case basis, and each individual application must be examined on its own merits.

13. Concerning the contention that the Department should not issue permits in the area until the adjudication of existing water rights in the area has been completed, it has been found that the determination of physical availability of water for new appropriations remains with the Department. By doing so the Department does not attempt to adjudicate existing water rights with a priority date preceding 1973, it merely is fulfilling its constitutional directive to administer the State's waters in a manner that benefits the people of Montana. All permits issued by the Department are provisional in nature and are subject to prior water rights and any final determination of existing water rights as provided by Montana law. See 85-2-101, MCA.

14. The Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation hold an unquantified reserved water right. Any Permit issued for water on the Reservation by the Department is junior to the Tribes' water rights.

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

PROPOSED ORDER

Subject to the terms, conditions, restrictions, and limitations specified below, Application for Beneficial Water Use Permit No. 75997-76L is hereby granted to Frank C. and Marilyn

Q Carr to appropriate by means of a flowing well a total of 700 gallons per minute up to 560 acre-feet of groundwater per year at a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, Township 21 North, Range 23 West, in Sanders County, for new and supplemental irrigation. The period of diversion and use shall be from March 15 through October 15, inclusive of each year.

The appropriation for new irrigation shall be 700 gallons per minute up to 275 acre-feet of water per year. The places of use for the new irrigation shall be are 40 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 40 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14; 15 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and 15 acres in the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, totaling 110 acres.

○ The appropriation for the supplemental irrigation shall be 350 gallons per minute up to 285 acre-feet of water per year. The places of use for the supplemental irrigation shall be 33 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, 38 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 54 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$, 30 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, and 19 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14, totaling 174 acres.

This Permit is subject to the following conditions:

A. This Permit is subject to all prior existing water rights in the source of supply. Further, this Permit is subject to any final determination of existing water rights as provided by Montana law.

○ B. The Permittee shall install an adequate flow metering device in order to allow the flow rate and volume of water diverted to be recorded. The Permit shall keep a written record

of the flow rate and volume of all waters diverted, including the period of time, and shall submit said records by November 30 of each year to the Water Resources Regional Office, 3220 Highway 93 South, P.O. Box 860, Kalispell, Montana 59903-0860.

C. This Permit is subject to § 85-2-505, MCA, requiring that all wells be constructed so they will not allow water to be wasted, or contaminate other water supplies or sources, and all flowing wells shall be capped or equipped so the flow of the water may be stopped when not being put to beneficial use.

D. This Permit is issued in association with Water Right Claims No. W124099-76L, W124105-76L, W124106-76L, W124100-76L, and W124104-76L. The combined appropriations may not exceed 2.5 acre-feet per acre per year on the acreage designated above as supplemental irrigation.

E. This Permit is specifically made subject to all prior Indian reserved water rights of the Confederated Salish and Kootenai Tribes in the source of supply. It is the Tribes' position that economic investments made in reliance upon this Permit do not create in the Permittee any equity or vested right against the Tribes. The Permittee is hereby notified that any financial outlay or work invested in a project pursuant to this permit is at the Permittees' risk.

F. Issuance of this Permit by the Department shall not reduce Permittee's liability for damages caused by exercise of this Permit, nor does the Department, in issuing this Permit, acknowledge any liability for damages caused by exercise of this

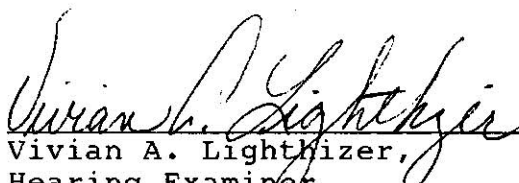
Permit, even if such damage is a necessary and unavoidable consequence of the same. The Department does not acknowledge liability for any losses that a Permittee may experience should they be unable to exercise the Permit due to the future exercise of reserved water rights.

NOTICE

This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. The exceptions must be filed and served upon all parties within 20 days after the proposal is mailed. Parties may file responses to any exception filed by another party within 20 days after service of the exception. However, no new evidence will be considered.

No final decision shall be made until after the expiration of the time period for filing exceptions, and due consideration of timely exceptions, responses, and briefs.

Dated this 19th day of June, 1991.


Vivian A. Lighthizer,
Hearing Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6625

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record at their address or addresses this 19th day of June, 1991 as follows:

Frank C. Carr
Marilynn Carr
Rt. 3, Box 456
Hot Springs, MT 59845

Dwight Preston
P.O. Box 636
Hot Springs, MT 59845

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Hot Springs, MT 59845

John A. Welch
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